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11 *appear on signature page*]

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
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16 IN RE KOREAN RAMEN ANTITRUST
17 LITIGATION,

18 THIS DOCUMENT RELATES TO:

19 All Actions
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Case No. 3:13-cv-04115 WHO

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANTS' MOTION
TO DISMISS DIRECT PURCHASER
PLAINTIFFS' AND INDIRECT
PURCHASER PLAINTIFFS' CLASS
ACTION COMPLAINTS**

*[Declarations of Joel S. Sanders and Jacki Noh
filed concurrently herewith]*

Date: October 1, 2014
Time: 2:00 p.m.
Place: Courtroom 2, 17th Floor

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Federal Rule of Evidence 201, Defendants, Nongshim Co., Ltd., Nongshim America, Inc., Ottogi Company, Ltd., Ottogi America, Inc., Samyang Foods Company, Ltd., Sam Yang (U.S.A.) Inc., Korea Yakult Co., Ltd., and, for purposes of the Indirect Purchaser action, Paldo Company, Ltd. (collectively, “Defendants”) respectfully request that the Court take judicial notice of the following documents in support of their Motion to Dismiss with prejudice all claims against the Defendants asserted by the Direct Purchaser Plaintiffs and the Indirect Purchaser Plaintiffs (collectively, “Plaintiffs”) in the above-captioned, consolidated and related actions:

A press release issued by the Korea Fair Trade Commission (“KFTC”) in Korean, which press release is publicly available on the KFTC website, and its English translation, both of which were distributed and introduced into the record by an attorney for the Direct Purchaser Plaintiffs during the February 3, 2014 hearing. A true and correct copy of the KFTC press release and its English translation is attached hereto as **Exhibit A**.

**POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANTS’ REQUEST FOR JUDICIAL NOTICE**

On a motion to dismiss, a court may consider facts and documents that are appropriate for judicial notice. *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986) (“on a motion to dismiss a court may properly look beyond the complaint to matters of public record and doing so does not convert a Rule 12(b)(6) motion to one for summary judgment”); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (same). Facts and documents that are “not subject to reasonable dispute” because they are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,” may be judicially noticed in considering a motion to dismiss. *Lee*, 250 F.3d at 689; Fed. R. Evid. 201.

Thus, a court may take judicial notice of matters of public record, including documents on file in federal or state courts, as well as translations of documents in a foreign language, as to which there is no dispute regarding their authenticity. *Harris v. County of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012) (taking judicial notice of court records); *Grolsche Bierbrouwerij Nederland, B.V. v. Dovebid, Inc.*, No. 11-763 SC, 2011 U.S. Dist. LEXIS 84587, at *4 (N.D. Cal.

Aug. 2, 2011) (granting judicial notice of English translation of Dutch document); *Luxpro Corp. v. Apple, Inc.*, No. C10-03058, 2011 U.S. Dist. LEXIS 35008, at *9 (N.D. Cal. March 24, 2011) (granting judicial notice of English translations of Chinese and German documents).

Further, the Ninth Circuit takes an “expansive view” on the incorporation by reference or completeness doctrine, *Teamsters Local 617 Pension & Funds v. Apollo Group, Inc.*, 633 F. Supp. 2d 763, 775-76 (D. Ariz. 2009), which “permits us to take into account documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the plaintiff’s pleading.” *Knivel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (internal quotations omitted). The Ninth Circuit has “extended the ‘incorporation by reference’ doctrine to situations in which the plaintiff’s claim depends on the contents of a document, the defendant attaches the document to its motion to dismiss, and the parties do not dispute the authenticity of the document, even though the plaintiff does not explicitly allege the contents of that document in the complaint.” *Id.*; *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998) (superseded by statute on other grounds). Under these circumstances, “the district court may treat such a document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6).” *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006).

The documents contained in Exhibit A fall squarely within Federal Rule of Evidence 201 as well as Ninth Circuit law about matters that may be considered on a motion to dismiss. Exhibit A consists of two documents that were distributed, and introduced into the record, by an attorney for Direct Purchaser Plaintiffs at the February 3, 2014 hearing in connection with the Direct Purchaser Plaintiffs’ Motions to Appoint Co-Lead Counsel: (1) a press release issued by the KFTC in Korean, and (2) the English translation of the press release. (Declaration of Joel S. Sanders ¶ 3.) During the February 3rd hearing, an attorney for the Direct Purchaser Plaintiffs read the contents of the English translation of the KFTC press release into the record, and affirmed that the press release was available on the KFTC website. (Sanders Decl. ¶ 3.) The press release is available on the website of the KFTC at http://www.ftc.go.kr/news/ftc/reportView.jsp?report_data_no=5257&tribu_type_cd=&report_dat

1 [a div cd=&currpage=36&searchKey=&searchVal=&stdat=&enddate=](#). The accuracy of the
 2 translation proffered by the attorney is further confirmed by the concurrently filed Declaration of
 3 Jacki Noh, a certified translator. (Declaration of Jacki Noh, ¶¶ 2-3.)

4 Given that the KFTC's Order is repeatedly referenced and quoted in the Plaintiffs'
 5 Complaints, and that the KFTC's press release explains the scope of the Order upon which the
 6 Plaintiffs' so heavily rely in their Complaints, the doctrine of incorporation by reference permits
 7 the Court to consider the press release and the translation thereof. *See Knievel*, 393 F.3d at 1076.
 8 This is especially true because no party can reasonably contest the authenticity of the documents.
 9 *See Teamsters Local 617 Pension & Funds*, 633 F. Supp. 2d at 775-76 (considering on a motion
 10 to dismiss a news release the authenticity of which neither party contested); *Parrino*, 146 F.3d at
 11 706. Exhibit A is not subject to reasonable dispute and is capable of being accurately and readily
 12 determined from sources whose accuracy cannot reasonably be questioned. (Sanders Decl., ¶ 3;
 13 Noh Decl., ¶¶ 2-3.) Judicial notice of this Exhibit is appropriate.

14 CONCLUSION

15 For the foregoing reasons, the Defendants respectfully request the Court to take judicial
 16 notice of Exhibit A.

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1 Dated: June 9, 2014

Respectfully submitted,

2 GIBSON, DUNN & CRUTCHER LLP

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ATTESTATION

I hereby attest that I have on file written authorization for any signatures indicated by a
“conformed” signature (/s/) within this e-filed document.

Dated: June 9, 2014

/s/ Mark C. Dosker

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